

TITLE 79 - NEBRASKA LAW ENFORCEMENT TRAINING CENTER

CHAPTER 9 - REVOCATION OF LAW ENFORCEMENT OFFICER CERTIFICATION

001 Purpose - To prescribe procedures for revocation of certificates of training issued to law enforcement officers, reserve officers, and tribal law enforcement officers by the State of Nebraska.

002 Scope - This chapter is applicable to law enforcement officers as defined in Neb.Rev.Stat. 81-1401(3)(a)-(b); tribal law enforcement officers pursuant to Neb.Rev.Stat. 81-1414(2); and reserve officers pursuant to Neb.Rev.Stat. 81-1439 et.seq. and as defined in Title 79, Chapter 1, paragraph 004.18.

003 Authority - Neb.Rev.Stat. 81-1403

004 Subject to review and approval of the Nebraska Commission on Law Enforcement and Criminal Justice, the Council shall revoke certificates pursuant to its authority under Neb.Rev.Stat. 81-1403

005 Initiation of a Complaint Leading to Revocation of Certification

005.01 Notification by a law enforcement agency or the Law Enforcement Training Center. A report shall be filed with the Commission when an agency has reason to believe that it knows of an officer who falls within the purview of Neb.Rev.Stat. 81-1403(5).

005.02 Notification by the Public. When an individual has reason to believe that there is an officer who falls within the purview of Neb.Rev.Stat. 81-1403(5), that individual must file a written complaint with the Commission.

005.03 The complaint or report shall be in writing and signed by the complainant or authorized representative if complainant is a department or organization.

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005.04 The complaint shall contain the following information:

1. Full name, address and telephone number of the complainant;
2. Full name, address, and telephone number, if known, of the respondent;
3. A concise statement of the facts which the complainant believes brings the respondent within the purview of Neb.Rev.Stat.81-1403(5) together with supporting documentation, if any.

005.05 When completed, complaints shall be delivered personally or by mail to the Nebraska Commission on Law Enforcement and Criminal Justice, 301 Centennial Mall South, P.O. Box 94946, Lincoln, Nebraska 68509. Upon receipt, each complaint shall be assigned a number and reviewed by a designee of the Commission.

005.06 A summary of the allegations shall be sent to the respondent by United States mail, certified mail, return receipt requested.

005.07 The respondent is allowed fourteen (14) days from the date of mailing of the summary/complaint to informally respond to the allegations of the complaint. The response shall be in writing and shall be delivered to the Commission in person or by United States mail, certified mail, return receipt requested.

006 Initial Inquiry. Any reports, allegations or complaints involving a respondent, together with any informal response by the respondent, shall be reviewed by a designee of the Commission for a decision as to the course of action regarding disposition of the complaint. Disposition may include one of the following: recommending rejection of the complaint, assigning the complaint for investigation, or setting the complaint for formal hearing.

006.01 Rejection of the Complaint. If the designee of the Commission, upon

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initial inquiry, makes a determination that the complaint should be rejected, a report shall be made to the Commission summarizing the facts and giving the basis for the rejection of the complaint. Unless the Commission votes by majority to order further inquiry, the matter shall be deemed closed and a letter summarizing the position of the Commission shall be sent to the complainant and the respondent.

006.02 Investigation. If the designee of the Commission deems it necessary, the complaint, respondent=s response and all other additional documentation and information shall be forwarded to the State Patrol or other designated law enforcement agency or qualified individual for investigation of the allegations.

006.03 Upon completion of its investigation, the State Patrol or other authorized investigative agency or person shall turn over all reports and relevant materials to the designee of the Commission for processing of the complaint.

006.04 If, after review of all documents, complaints, responses in the initial inquiry, and results of any investigation, the Commission designee makes the determination that the respondent falls within the purview of Neb.Rev.Stat. 81-1403(5), the designee shall cause a formal complaint to be filed with the Commission regarding revocation of the respondent=s certification.

007 Formal Complaint and Notice of Hearing. A formal complaint and notice of hearing before the Council shall be served on the respondent by mailing a copy of same by certified mail, return receipt requested, to the respondent=s last known address. The notice shall comport with the requirements of Neb.Rev.Stat.84-913. The hearing shall be had not more than sixty (60) days from the date of the filing of the formal complaint, unless continued for good cause by the Council.

007.01 There shall be a notice in large type or some other manner so as to be noticeably different from the type face of the rest of the complaint and hearing notice that failure to appear for a requested prehearing conference shall result in sanctions being levied against the party failing to appear. Such sanctions may include, but are not limited to, a levy of costs incurred up to that point in the case.

008 Answer. The respondent shall have not more than fifteen (15) days from the filing

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of the formal complaint to file an answer to the formal complaint.

008.01 The answer shall contain the following information:

1. Name and address of the respondent
2. Specific statements regarding any and all allegations in the complaint and notice which shall be in the form of admissions, denials, explanatory remarks, or statements of mitigating circumstances and any additional facts or information the respondent deems relevant and which may be of assistance in the ultimate determination of the case.

008.02 The answer may contain the following:

1. A waiver of a contested hearing
2. Request for a closed hearing
3. Request for a continuance, along with a statement showing good cause for the continuance.
4. Request for a prehearing conference

009 Prehearing Conference. Not fewer than thirty (30) days before the date set for hearing, a prehearing conference may be held. The Council may allow such a conference upon the request of either party or may set one on its own motion and authority. The Council may allow the prehearing conference to be done telephonically. The Council chairperson or his or her designee shall act as presiding officer and may direct the parties to appear at a specified place and time to:

- a. Simplify the issues
- b. Amend the complaint and/or answer
- c. Exchange lists of witnesses
- d. List, number, and review exhibit
- e. Stipulate to agreed facts, if any
- f. Enter into other stipulations as may be necessary

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- g. Request a continuance, upon a showing of good cause
- h. Make requests for witnesses to be subpoenaed
- i. Make such requests as deemed appropriate regarding discovery as allowed under Neb.Rev.Stat. 84-914 et.seq. to the Commission

The presiding officer shall act on the requests and forward to the Executive Director any and all requests for subpoenas. The presiding officer shall summarize the prehearing conference in an order. The order shall be mailed to petitioner and respondent and any counsel of record.

010 Hearing Procedure in a Contested Case

010.01 The Council shall act as the Hearing Board in the matter. The Council sitting as the Hearing Board shall have a representative of the Attorney General's Office to rule on all questions of law that may arise in the course of the

hearing and to assist in the preparation of the findings of fact and conclusions of law to be transmitted to the Commission.

010.02 The Commission shall designate an attorney to present the case for the revocation on behalf of the petitioner.

010.03 The petitioner and respondent shall have all rights and responsibilities afforded each party in a contested case under Neb.Rev.Stat. 84-901 et.seq., the Administrative Procedures Act.

010.04 The officer in question is entitled to be represented by counsel at his or her own expense at the hearing. Counsel for the respondent shall enter a written notice of appearance at the earliest opportunity. Retention of, or representation by, an attorney less than ten (10) days prior to the formal hearing shall not constitute good cause for a continuance without a showing of extenuating circumstances.

010.05 The proceedings of the formal hearing shall be recorded by mechanical

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or electronic means. The recordings of the proceedings shall be kept for at least (4) years from the date of the final decision of the Commission.

010.06 Default Procedure. A failure to appear at a formal hearing shall be deemed to be an admission of the facts alleged in the complaint. The Hearing Board upon submission of evidence by the petitioner, shall render its findings of fact, conclusions of law and recommendation upon the evidence submitted by the petitioner. Such evidence may include, but is not limited to, affidavits stating relevant information, investigative reports, and pleadings filed in the case.

010.07 A revocation of a certification by the Commission which is based on a default shall be set aside only by a showing of good cause regarding the respondent=s failure to appear at the scheduled formal hearing.

010.08 After receiving all evidence and hearing all testimony in the case, the hearing examiner shall make a written report of findings of fact and conclusions of law. Exhibits relied upon or referred to in the Findings of Fact and Conclusions of Law shall be forwarded to the Commission as part of the reported findings. This report shall be submitted to the Commission within thirty (30) days of the hearing, along with a recommendation to the Commission regarding the action to be taken on the revocation of respondent=s certification.

010.09 At the quarterly meeting of the Commission following submission of the Council=s findings, the Commission shall, concomitant with Neb.Rev.Stat. 81-1403, either dismiss the complaint to revoke the certification or revoke the certification upon a finding by a preponderance of the evidence submitted by the Council that the certificate should be revoked. The Commission shall be bound by its normal rules of operation as defined by Neb.Rev.Stat. 81-1415 et.seq.

011 The Commission shall reduce its decision to writing, to include its findings of fact and conclusions of law and send a copy of its decision to the respondent via certified or registered mail, return receipt requested, to the respondent=s last known address. Copies of the decision shall be sent to the attorneys representing the petitioner and the respondent. The decision shall be sent within five (5) working days after it is filed by the

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Commission.

012 Appeal Process. Appeals shall be filed in accordance with Neb.Rev.Stat. 81-917 et.seq.

013 Non-Compliance with the Two-Year Provision of 81-1403(5)

013.01 All departments, agencies or political subdivisions shall cause the Law Enforcement Training Center, hereinafter known as Training Center, to be notified of the cessation of employment of any of their law enforcement officers. This shall be done in writing on a Change-in-Status form which may be obtained from the Training Center. This notification must be made within thirty (30) days from the date of the cessation of employment.

013.02 All departments, agencies or political subdivisions shall cause the Training Center to be notified when any law enforcement officer is appointed or hired. This notification shall be done in writing on a Change-in-Status form which may be obtained from the Training Center. The notification must be made within thirty (30) days of the date of hire or appointment of the law enforcement officer.

013.03 The Training Center shall keep records of the employment status of all law enforcement officers in the state and shall forward to the Commission a list of those law enforcement officers who have not had full or part-time employment as law enforcement officers for at least two years. This reporting shall be made to the Commission on a biennial basis.

013.04 The information shall be given to the designee of the Crime Commission for informal inquiry into the employment status of the law enforcement officer. Upon request, the Training Center shall forward appropriate documentation to the designee with respect to the officer=s employment status. The designee shall proceed with informal inquiry set forth in this chapter.

013.05 Notice of Non-Compliance: If the designee of the Commission has reason to believe that the law enforcement officer comes within the purview of Section 81-1403(5) as not having been employed as a law enforcement officer for at least two years, a notice shall be sent certified mail, return receipt

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requested, to the officer in question. The notice shall be sent to the last known address of the law enforcement officer. The notice shall advise the officer that his/her certification shall be revoked unless one or more of the following occurs within two years from the date of the notice.

1. The officer obtains continuous full-time or part-time employment as a law enforcement officer commencing during the two years
2. The officer at his/her own expense successfully completes a program or course of training prescribed by the Commission which serves to update and keep current the officer=s training.

013.06 The law enforcement officer shall provide proof of employment and/or successful completion of prescribed training to the Crime Commission in a form approved by the Commission.

013.07 A law enforcement officer who completes the training program as set forth herein will be deemed to have a conditional active certification, good for a period of two (2) years from the date of completion of training. This conditional status may be continued or renewed every two years by the successful completion of a training program prescribed by the Commission, if completed within the two-year period.

013.08 Full active certification may be obtained by a law enforcement officer by becoming employed as a full-time or part-time law enforcement officer within the two-year notice or any renewal period.

013.09 If the law enforcement officer has not successfully completed a prescribed course of instruction as provided for herein or has not obtained full or part-time employment as a law enforcement officer during the two-year period following the date of formal notice of non-compliance or during any subsequent renewal period, the designee of the Commission shall cause to be filed a formal complaint and notice of hearing requesting revocation of certification in the form and manner as set forth in Section 007 et.seq.

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013.10 If the law enforcement officer signs an affidavit to the effect that he or she is permanently retired from active law enforcement service, then the Commission may revoke his or her active certification and if so, shall issue him or her an inactive certificate, along with a letter of explanation that the inactive certificate does not entitle the officer to act as or possess any authority as a law enforcement officer.

014 Miscellaneous Provisions: All terms used herein shall have their statutory definitions applied, if such definitions exist, except as follows:

014.01 Complainant: shall mean any individual(s) or organization(s) or department(s) or agency or agencies filing a report, complaint, or other information with the Commission alleging that a law enforcement officer comes within the purview of Neb.Rev.Stat. 81-1403(5)

014.02 Respondent: shall mean any individual law enforcement officer who shall be alleged to be within the purview of Neb.Rev.Stat. 81-1403(5)

014.03 Petitioner: shall mean a party to the formal revocation proceeding representing the State of Nebraska in presenting the evidence against the respondent.

014.04 Formal Complaint: shall mean the written allegation(s) and charge(s) against the respondent alleging that the respondent comes within the purview of Neb.Rev.Stat. 81-1403(5).

014.05 Formal Hearing: refers to the proceedings before the Council.

015 All forms referred to herein may be obtained at the Nebraska Commission on Law Enforcement and Criminal Justice, 301 Centennial Mall South, P. O. Box 94946, Lincoln, Nebraska 68509.

016 If any section of this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

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017 Original sections of Title 79, Chapter 9 of the Rule and Regulations of the State of Nebraska are hereby repealed.

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